

Advisory Opinion

IECDB AO 2007-03

June 28, 2007

Leland Tack
Department of Education
6805 North Glenn Way
Johnston, Iowa 50131

Dear Mr. Tack:

This opinion is in response to your letter of May 21, 2007, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You request this opinion in your capacity as the former Administrator of the Financial and Information Services Division in the Department of Education (DOE) and now as an independent contractor with a company located outside of Iowa.

Your opinion request states that as part of your former state duties you were involved in initiating and supporting DOE's move toward the electronic collection of data from school districts. Prior to leaving state service you facilitated a meeting to determine interest and support for a data warehouse to collect and process this data. As a result of this meeting, and other discussions that you were not involved in, DOE issued a RFP for developing and implementing a data warehouse solution. You state that you were not involved in the drafting, reviewing, or writing the RFP. You retired on November 15, 2006, and the RFP was issued on March 19, 2007.

QUESTION:

Based on your factual statement you ask us the following questions:

1. Are you prohibited from working on the development of a response to the RFP?

2. Would the company that employs you be prohibited from identifying you as one of the key persons who would be involved in the project as part of the company's response to the RFP?

3. Would you be prohibited from working on this project?

OPINION:

Two sections of the state code of ethics in Iowa Code chapter 68B and the Board's administrative rules in 351—Chapter 6 address post state employment issues. First, Iowa Code section 68B.5A bans certain lobbying activities for two years after leaving state government. That statute does not seem to apply to your questions as the activities you describe in your opinion request do not trigger the definition of "lobbying."¹

Iowa Code section 68B.7 also prohibits you from engaging in certain activities for two years after leaving state government. That statute prohibits you from appearing before your former agency or receiving compensation for "any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application" you were "directly concerned and personally participated" during state service.

In applying this section to your questions the Board first notes that it does not appear that you were "directly concerned and personally participated" in the project during your time with DOE. You did not draft, review, or otherwise work on the RFP while you were employed with DOE. While you may have participated in discussions that ultimately resulted in the project in question, we do not believe this rises to the level of involvement the statute seeks to prohibit.²

As the Board does not believe that you were "directly concerned and personally participated" in the data warehouse solution project during your employment with DOE, then the prohibitions in Iowa Code section 68B.7 would not apply. Therefore, you would not be prohibited from working on the response to the RFP, you could be identified as one of the individuals who would be working on the project, and you could work on the project without having to wait for two years after leaving DOE.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹See Iowa Code section 68B.2(13) and Board rules 351—8.1 through 8.3 for the definitions of “lobbyist” and “lobbying.”

² See IECDB Advisory Opinion 2000-43 in which the Board opined that even “reviewing early drafts of an RFP” did not “rise to the level of directly concerned and personally participated” for purposes of Iowa Code section 68B.7.